IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

TUESDAY, THE 30TH OCTOBER 2007 / 8TH KARTHIKA 1929

CRL.A.No. 220 of 2002()

ST.5387/1998 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR .
.....

APPELLANT: COMPLAINANT

K.R.DAVIS, POWER OF ATTORNEY,
S/O.RAPPAI, OLLUR VILLAGE, COMMON MENS CHITTIES AND LOANS (P) LTD.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.M.RAFIQ

RESPONDENTS: ACCUSED AND STATE
----

1. SHAHUL HAMEED, S/O. MUHAMMED,PUTHOLE DESOM, THRISSUR TALUK.

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY ADV. SRI.K.N.PADMAKUMAR
PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 30/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.A.No.220 of 2002

Dated this the 30th day of October, 2007

JUDGMENT

The appellant is the complainant in S.T.No.5387/98 in the court of Judicial First Class Magistrate Court-I, Thrissur who had instituted proceedings under Section 138 of the Negotiable Instruments Act in which the accused/respondent stood acquitted.

2. It is the case of the complainant who was the power of attorney holder of the company that was conducting chitty business, that the accused had auctioned kuries and received the amount and altogether a sum of Rs.40,000/- was due and towards the above liability the accused issued the impugned cheque which when presented got dishonoured for want of funds in the account of the accused.

3. The evidence adduced in the matter consisted of the testimony of PW1, Exts. P1 to P14, DWs' 1 and 2 and Ext. D1.

4. The trial court acquitted the accused mainly on the ground that the ledger sought to be produced from the custody

of the complainant as per the application filed by the accused vide C.M.P.No.2790/01 was not produced. The version of PW1 that the above ledger has been destroyed after auditing was found to be not satisfactory. It was found that even PW1 has admitted that the documents would not be destroyed if any amounts are due. It is also to be noted that Ext. P2 the impugned cheque is dated 20.5.1997 and the complaint has been filed on 23.11.1997. Hence, the alleged destruction would not have been before 23.11.1997. When the case is pending the complainant is not expected to destroy the relevant document. It was in the above circumstances that the court below drew adverse inference against the complainant. Moreover, DW1 a surety to the accused and DW2 the accused himself were examined and produced Ext. D1. PW1 has admitted that the amount due as per Ext. D1 is only Rs.16,400/-. According to him it is with respect to Exts. P13 and P14 documents as per which the accused was surety to the kuries by other persons that the amounts are due. But in the complaint the allegation is that the amounts are due towards the kuries bid by the accused. I find that in the circumstances that the accused has specifically

disputed the amount due and document has been produced by the accused the complainant ought to have produced the concerned document. It is the specific version of the accused (DW2) that the fact of handing over of a blank cheque can be revealed if the ledger with respect to kuri No.19 of which the pass book is Ext. D1, is produced. In the circumstances, I find no reason to disturb the findings of the court below.

The appeal is dismissed.

K.R.UDAYABHANU,
JUDGE

csl